

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FREDERICK NIGEL ATKINS,

Plaintiff,

v.

HEIDI WASHINGTON, et al.,

Defendants.

CASE No. 2:23-CV-253

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action (ECF No. 28) and Plaintiff's Objection to it. (ECF No. 30). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting Defendant Hubble's motion for summary judgment and dismissing Plaintiff's Complaint against that defendant—the only remaining defendant in the case—without prejudice for failure to exhaust his administrative remedies. Plaintiff's objection does not meaningfully respond to the Magistrate Judge's reasoning on the law of exhaustion, nor does it raise any specific objection to the Report and Recommendation. The objection, rather, is essentially a policy objection to the exhaustion requirement. However sincere that objection might be to Plaintiff, it does not overcome the exhaustion requirement. The Magistrate Judge carefully and thoroughly considered the record, the parties' arguments, and the governing law. The Magistrate Judge properly analyzed Plaintiff's claims. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court concludes that Defendant's motion for summary judgment must be granted, for the very reasons detailed in the Report and Recommendation of the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 28) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant Hubble's Motion for Summary Judgment (ECF No. 20) is **GRANTED**.

A separate Judgment shall issue.

The Court discerns no good-faith basis for appeal of this matter. *See McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

Dated: November 6, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE